

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DONNA HOPE MOODIE,

Plaintiff,

-against-

STATE ATTORNEY GENERAL LETICIA  
JAMES; ERISA,

Defendants.

23-CV-10708 (LTS)

ORDER OF DISMISSAL  
WITH LEAVE TO REPLEAD

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action invoking the Court's federal question jurisdiction, 28 U.S.C. § 1331. She asserts that her rights under the Eleventh Amendment have been violated. By order dated December 12, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. For the reasons set forth in this order, the Court dismisses the complaint, but grants Plaintiff 30 days' leave to replead her claims in an amended complaint.

**STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See Fed. R. Civ. P. 12(h)(3).*

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470

F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

## **BACKGROUND**

Plaintiff, who resides in Brooklyn, New York, brings her claims using the court’s general complaint form. Named as defendants are New York State Attorney General Letitia James and the Employee Retirement Income Security Act (“ERISA”), a federal law. In response to the question asking which of her federal constitutional or federal statutory rights have been violated, she writes:

- 11th Amendment rights have been violated because 1:79-CV-01977-CSH was commenced in California as it appears in California case numbering format & not New York State case numbering format.

(ECF 1, at 2.)<sup>1</sup>

Plaintiff alleges that the events giving rise to her claims occurred in this court on June 10, 2019, and then refers to *Sharpe v. Califano*, No. 79-CV-1977 (CSH) (S.D.N.Y. filed Apr. 17,

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<sup>1</sup> Plaintiff writes using irregular capitalization. For readability, where appropriate, the Court uses standard capitalization when quoting from the complaint. All other spelling, grammar, and punctuation are as in the original unless otherwise indicated.

1979),<sup>2</sup> which she claims involved the United States Government and a defendant with disabilities under “791 Labor: E.R.I.S.A.”<sup>3</sup> (*Id.* at 5.) Plaintiff then asserts the following:

- On 4/17/1979 I was 8 yrs. of age & had not attained the legal age required by law to work in New York.
- I never had a physical or mental disability therefore I would not fall under the criteria 791-employment of individuals with disabilities.
- My name is Donna Hope Moore not, Albert Sharpe, Joseph A. Califano, Jr., Letitia James or any other individual attached to this whether they are mentioned or not.

(*Id.*)

Plaintiff makes the observation that ERISA is a federal law and not the Social Security Administration (“SSA”), and asserts that she was born in 1970, has not yet reached the retirement age of 65, and was not old enough to have filed “an employee retirement case on 4/17/1979.” (*Id.* at 6.) She further writes:

- In regards to Docket #26 filed on 2/3/1980 & entered on 6/10/2019, when the Atty. Gen of the State of NY was Letitia James then & presently.
- I won lawsuit in Nassau County case # 00481/19 wherein AG Letitia James transferred my funds over to E.R.I.S.A. pension plans in a private industry.
- The [SSA] is an independent industry & is not affiliated with ERISA pension plans in private industries. ERISA does not cover plans established or maintained by governmental entities

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<sup>2</sup> The *Sharpe* case is a class action before Judge Charles S. Haight, consisting of New York State residents who apply for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381 *et seq.* On August 6, 1979, Judge Haight granted a permanent injunction, imposing time limits on the predecessor of the SSA to prevent undue delay in processing the claims of certain applicants for SSI benefits. The Court of Appeals for the Second Circuit affirmed the decision in *Sharpe v. Harris*, 621 F.2d 530, 532 (2d Cir. 1980).

<sup>3</sup> Although Sharpe relates to SSI benefits, the docket lists the case as asserting claims under ERISA, 29 U.S.C. § 1001, with nature of suit code “791 Labor: E.R.I.S.A.” See *Sharpe*, No. 79-CV-1977 (CSH).

- I am receiving overpayment billing statements from SSA in regards to disability overpayments.

(*Id.* at 6, 8.)

In the injuries section of the complaint, Plaintiff asserts the following:

- I was electronically shocked by these network of developmental disabled individuals wherein persons of this network include positions of electrical engineering.
- The electro-shock resulted in several hospitalizations due to loss of oxygen, blood flow dysfunctioning, weight loss, skin damages etc.

(*Id.* at 6.)

Plaintiff seeks damages in the amount of \$11,973,457.36, along with interest from April 17, 1979, to the present. She also seeks punitive damages for the “harm that [she] & [her] family endured due to the defendant(s) detrimental behavior.” (*Id.*)

## **DISCUSSION**

### **A. Rule 8**

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads sufficient factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true, *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009), but it need not accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

Rule 8(a)(2) requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “A complaint fails to comply with Rule 8(a)(2) if it is ‘so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.’” *Strunk v. U.S. House of Representatives*, 68 F. App’x 233, 235 (2d Cir. 2003) (summary order) (citation omitted). Rule 8 “does not demand that a complaint be a model of clarity or exhaustively present the facts alleged,” but it does require, “at a minimum, that a complaint give each defendant fair notice of what the plaintiff’s claim is and the ground upon which it rests.” *Atuahene v. City of Hartford*, 10 F. App’x 33, 34 (2d Cir. 2001) (citation and quotation marks omitted). “It is not the Court’s job – nor the opposing party’s – to decipher a complaint that is ‘so poorly composed as to be functionally illegible.’” *Ghosh v. N.Y.C. Hous. Auth.*, No. 21-CV-6139, 2023 WL 3612553, at \*6 (S.D.N.Y. Feb. 27, 2023) (quoting *Avramham v. New York*, No. 20-CV-4441, 2020 WL 4001628, at \*2 (S.D.N.Y. July 15, 2020)).

A complaint that fails to comply with Rule 8 may be dismissed. See *Da Costa v. Marcucilli*, 675 F. App’x 15, 17 (2d Cir. 2017) (summary order) (dismissing a complaint because it was convoluted, repetitive and difficult to understand); *Anduze v. City of New York*, No. 21-CV-0519, 2021 WL 795472, at \*2 (S.D.N.Y. Feb. 26, 2021) (dismissing a complaint as incomprehensible because it was illegible and the legible portions were incomprehensible, such that “the [c]ourt is unable to properly evaluate the full nature and extent of [the] [p]laintiff’s claims”); *Barsella v. United States*, 135 F.R.D. 64, 66 (S.D.N.Y. 1991) (stating that the policy requiring courts to liberally construe *pro se* complaints “does not mandate that a court sustain every *pro se* complaint even if it is incoherent, rambling, and unreadable”).

Here, even when read with the “special solicitude” due *pro se* pleadings, *Triestman*, 470 F.3d at 475, it is clear that Plaintiff cannot bring suit against ERISA, a federal law, and she does

not provide Defendant James or any other person with information about the events that allegedly violated her rights. Plaintiff provides no context for her claims and does not explain her references to the *Sharpe* case. She may be attempting to assert claims with respect to Social Security benefits, but she does not allege what happened or why she is entitled to the relief that she seeks. Plaintiff's complaint thus fails to comply with Rule 8 and does not state a claim on which relief can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

#### **B. Eleventh Amendment**

Furthermore, “as a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states’ Eleventh Amendment immunity . . . .” *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009). “The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state.” *Id.* New York has not waived its Eleventh Amendment immunity to suit in federal court, and Congress did not abrogate the states’ immunity in enacting 42 U.S.C. § 1983. *See Trotman v. Palisades Interstate Park Comm’n*, 557 F.2d 35, 40 (2d Cir. 1977).

Here, Plaintiff apparently brings claims for damages against New York State Attorney General Letitia James, who is a New York State official, in her official capacity. Such claims, however, are precluded by the Eleventh Amendment.<sup>4</sup> *See, e.g., Exxon Mobil Corp. v. Healey*,

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<sup>4</sup> A plaintiff can sue a state official in his or her official capacity, notwithstanding the Eleventh Amendment, if the plaintiff “(a) alleges an ongoing violation of federal law and (b) seeks relief properly characterized as prospective.” *In re Deposit Ins. Agency*, 482 F.3d 612, 618 (2d Cir. 2007) (citing *Ex parte Young*, 209 U.S. 123 (1908)); *Berman Enterprises, Inc. v. Jorling*, 3 F.3d 602, 606 (2d Cir. 1993) (“[A]cts of state officials that violate federal constitutional rights are deemed not to be acts of the state and may be the subject of injunctive or declaratory relief in federal court.” (citing *Kentucky v. Graham*, 473 U.S. 159, 167 n. 14 (1985)). Here, Plaintiff does not allege facts suggesting that James is committing an ongoing violation of federal law or indicate that she is seeking prospective injunctive relief against her.

28 F.4th 383, 392 (2d Cir. 2022) (“[T]he Eleventh Amendment bars the award of money damages against state officials in their official capacities.”).

### C. Leave to Amend

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the United States Court of Appeals for the Second Circuit has cautioned that district courts “should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). In an abundance of caution, the Court grants Plaintiff 30 days’ leave to replead her claims in an amended complaint. If Plaintiff files an amended complaint, she must clearly state the facts giving rise to her claims and name as defendants the individuals or entities responsible.<sup>5</sup>

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<sup>5</sup> To the extent Plaintiff may be seeking judicial review of an SSA’s decision with respect to Social Security benefits, under 42 U.S.C. §§ 405(g) and/or 1383(c)(3), such an action may be brought only in one of the following venues:

the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia.

Plaintiff alleges that she resides in Kings County, New York, and she makes no allegation about a principal place of business. Because Kings County is within the judicial district of the United States District Court for the Eastern District of New York, *see* 28 U.S.C. § 112(c), it is likely that this court is not the appropriate venue for such an action.

If Plaintiff does not file an amended complaint within the time allowed, the Court will direct the Clerk of Court to enter a judgment dismissing this action for the reasons set forth in this order.

### **CONCLUSION**

The Court dismisses the complaint for failure to state a claim on which relief can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). All other pending matters in this case are terminated.

The Court, however, grants Plaintiff 30 days' leave to file an amended complaint, as specified in this order. If Plaintiff does not file an amended complaint within the time allowed, or fails to show cause as to such failure, the Court will direct the Clerk of Court to enter a judgment dismissing this action for the reasons stated in this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppededge v. United States*, 369 U.S. 438, 444-45 (1962).

The Court directs the Clerk of Court to hold this matter open on the docket until a civil judgment is entered.

SO ORDERED.

Dated: May 22, 2024  
New York, New York

/s/ Laura Taylor Swain

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LAURA TAYLOR SWAIN  
Chief United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

CV \_\_\_\_\_  
(Include case number if one has been assigned)

-against-

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**AMENDED**

**COMPLAINT**

Do you want a jury trial?

Yes     No

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Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

## I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- Federal Question**
- Diversity of Citizenship**

### A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

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### B. If you checked Diversity of Citizenship

#### 1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, \_\_\_\_\_, is a citizen of the State of  
(Plaintiff's name)

\_\_\_\_\_  
(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of \_\_\_\_\_.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, \_\_\_\_\_, is a citizen of the State of  
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If the defendant is a corporation:

The defendant, \_\_\_\_\_, is incorporated under the laws of  
the State of \_\_\_\_\_

and has its principal place of business in the State of \_\_\_\_\_  
or is incorporated under the laws of (foreign state) \_\_\_\_\_

and has its principal place of business in \_\_\_\_\_.

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

## II. PARTIES

### A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

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First Name	Middle Initial	Last Name
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Street Address
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County, City	State	Zip Code
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Telephone Number	Email Address (if available)
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**B. Defendant Information**

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 4:

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First Name	Last Name
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Current Job Title (or other identifying information)

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Current Work Address (or other address where defendant may be served)

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County, City	State	Zip Code
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### III. STATEMENT OF CLAIM

Place(s) of occurrence: \_\_\_\_\_

Date(s) of occurrence: \_\_\_\_\_

#### FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

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**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

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**IV. RELIEF**

State briefly what money damages or other relief you want the court to order.

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## V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature	
First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

Yes    No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.